

§ 4022.9

29 CFR Ch. XL (7–1–15 Edition)

(ii) A 5-year certain-and-continuous annuity;

(iii) A 10-year certain-and-continuous annuity;

(iv) A 15-year certain-and-continuous annuity; and

(v) The form an unmarried person would be entitled to receive from the plan in the absence of an election.

(5) *Permitted optional joint-life forms.* The PBGC may offer benefits in the following joint-life forms:

(i) A joint-and-50%-survivor annuity;

(ii) A joint-and-50%-survivor-“pop-up” annuity (*i.e.*, where the participant’s benefit “pops up” to the unreduced level if the beneficiary dies first);

(iii) A joint-and-75%-survivor annuity; and

(iv) A joint-and-100%-survivor annuity.

(6) *Determination of benefit amount; starting benefit.* To determine the amount of the benefit in an optional PBGC form—

(i) *Single-life forms.* In the case of an optional PBGC form under paragraph (c)(4) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to an unmarried participant in the absence of an election.

(ii) *Joint-life forms.* In the case of an optional PBGC form under paragraph (c)(5) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to a married participant in the absence of an election. For this purpose, the PBGC will treat a participant who designates a non-spouse beneficiary as being married to a person who is the same age as that non-spouse beneficiary.

(7) *Determination of benefit amount; conversion factors.* The PBGC will convert the benefit amount determined under paragraph (c)(6) of this section to the optional form elected, using PBGC factors based on—

(i) *Mortality.* Unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Internal Revenue Service Cumulative Bulletins are available

from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); and

(ii) *Interest.* An interest rate of six percent.

(8) *Determination of benefit amount; limitation.* The PBGC will limit the benefit amount determined under paragraph (c)(7) of this section to the amount of the benefit it would pay in the form of a straight life annuity under paragraph (c)(4)(i) of this section.

(9) *Incidental benefits.* The PBGC will not pay an optional PBGC form with a death benefit (e.g., a joint-and-50%-survivor annuity) unless the death benefit would be an “incidental death benefit” under 26 CFR 1.401–1(b)(1)(i). If the death benefit would not be an “incidental death benefit,” the PBGC may instead offer a modified version of the optional form under which the death benefit would be an “incidental death benefit.”

(d) *Change in benefit form.* Once payment of a benefit starts, the benefit form cannot be changed.

(e) *PBGC discretion.* The PBGC may make other optional annuity forms available subject to the rules in paragraph (c) of this section.

(f) *Rollover amounts.* The annuity benefit resulting from rollover amounts (as determined under § 4044.12(c)(4) of this chapter) is combined with any other benefit under the plan and paid in the same form and at the same time as the other benefit.

[67 FR 16954, Apr. 8, 2002, as amended at 79 FR 70095, Nov. 25, 2014]

§ 4022.9 Time of payment; benefit applications.

(a) *Time of payment.* A participant may start receiving an annuity benefit from the PBGC (subject to the PBGC’s rules for starting benefit payments) on his or her Earliest PBGC Retirement Date as determined under § 4022.10 of this subchapter or, if later, the plan’s termination date.

(b) *Elections and consents.* The PBGC may prescribe the time and manner for benefit elections to be made and spousal consents to be provided.

(c) *Benefit applications.* The PBGC is not required to accept any application

for benefits not made in accordance with its forms and instructions.

(d) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

[67 FR 16955, Apr. 8, 2002, as amended at 68 FR 61353, Oct. 28, 2003]

§ 4022.10 Earliest PBGC Retirement Date.

The Earliest PBGC Retirement Date for a participant is the earliest date on which the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA. The Earliest PBGC Retirement Date is determined in accordance with this § 4022.10. For purposes of this § 4022.10, “age” means the participant’s age as of his or her last birthday (unless otherwise required by the context).

(a) *Immediate annuity at or after age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the earliest date on which the participant could separate from service with the right to receive an immediate annuity.

(b) *Immediate annuity before age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is before the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the date the participant reaches age 55 (except as provided in paragraph (c) of this section).

(c) *Facts and circumstances.* If a participant could separate from service with the right to receive an immediate annuity before the date the participant reaches age 55, the PBGC will make a determination, under the facts and circumstances, as to whether the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA on an earlier date. If the PBGC determines, under the facts and circumstances, that the participant could retire under plan provisions for those purposes on an earlier date, that earlier date is the Earliest PBGC Retirement Date for the participant. In making this determination, the PBGC will take into account plan provisions (e.g., the general structure of the provisions, the extent to which the benefit is subsidized, and whether eligibility for the benefit is based on a substantial service or age-and-service requirement), the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. Neither a plan’s reference to a separation from service at a particular age as a “retirement” nor the ability of a participant to receive an immediate annuity at a particular age necessarily makes the date the participant reaches that age the Earliest PBGC Retirement Date for the participant. The Earliest PBGC Retirement Date determined by the PBGC under this paragraph (c) will never be earlier than the earliest date the participant could separate from service with the right to receive an immediate annuity.

(d) *Examples.* The following examples illustrate the operation of the rules in paragraphs (a) through (c) of this section.

(1) *Normal retirement age.* A plan’s normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon separation before normal retirement age. The Earliest PBGC Retirement Date for a participant who, as of the plan’s termination date, is age 50 is the date the participant reaches age 65.

(2) *Early retirement age.* A plan’s normal retirement age is age 65. The plan specifies an early retirement age of 60 with 10 years of service. The plan does